

AMENDED IN ASSEMBLY JUNE 11, 2009

AMENDED IN SENATE MAY 19, 2009

AMENDED IN SENATE APRIL 14, 2009

SENATE BILL

No. 404

Introduced by Senator Benoit

February 26, 2009

An act to amend Section 226 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

SB 404, as amended, Benoit. Employment: information for employees.

Existing law requires an employer to provide its employees with specified information regarding their wages either semimonthly or at the time of each wage payment.

This bill would clarify that the employer may provide the wage information either on a detachable part of the payment made to the employee or on a separate page *accompanying the payment of wages*.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 226 of the Labor Code is amended to
2 read:
3 226. (a) Every employer shall, semimonthly or at the time of
4 each payment of wages, furnish each of his or her employees,
5 either as a detachable part of the check, draft, or voucher paying

1 the employee's wages, or on a separate page *accompanying the*
2 *payment of wages*, an accurate itemized statement in writing
3 showing the following:

4 (1) Gross wages earned.

5 (2) Total hours worked by the employee, except for any
6 employee whose compensation is solely based on a salary and who
7 is exempt from payment of overtime under subdivision (a) of
8 Section 515 or any applicable order of the Industrial Welfare
9 Commission.

10 (3) The number of piece-rate units earned and any applicable
11 piece rate if the employee is paid on a piece-rate basis.

12 (4) All deductions, provided that all deductions made on written
13 orders of the employee may be aggregated and shown as one item.

14 (5) Net wages earned.

15 (6) The inclusive dates of the period for which the employee is
16 paid.

17 (7) The name of the employee and the last four digits of his or
18 her social security number or an employee identification number
19 other than a social security number.

20 (8) The name and address of the legal entity that is the employer.

21 (9) All applicable hourly rates in effect during the pay period
22 and the corresponding number of hours worked at each hourly rate
23 by the employee. The deductions made from payments of wages
24 shall be recorded in ink or other indelible form, properly dated,
25 showing the month, day, and year, and a copy of the statement or
26 a record of the deductions shall be kept on file by the employer
27 for at least three years at the place of employment or at a central
28 location within the State of California.

29 (b) An employer that is required by this code or any regulation
30 adopted pursuant to this code to keep the information required by
31 subdivision (a) shall afford current and former employees the right
32 to inspect or copy the records pertaining to that current or former
33 employee, upon reasonable request to the employer. The employer
34 may take reasonable steps to assure the identity of a current or
35 former employee. If the employer provides copies of the records,
36 the actual cost of reproduction may be charged to the current or
37 former employee.

38 (c) An employer who receives a written or oral request to inspect
39 or copy records pursuant to subdivision (b) pertaining to a current
40 or former employee shall comply with the request as soon as

1 practicable, but no later than 21 calendar days from the date of the
2 request. A violation of this subdivision is an infraction.
3 Impossibility of performance, not caused by or a result of a
4 violation of law, shall be an affirmative defense for an employer
5 in any action alleging a violation of this subdivision. An employer
6 may designate the person to whom a request under this subdivision
7 will be made.

8 (d) This section does not apply to an employer of any person
9 employed by the owner or occupant of a residential dwelling whose
10 duties are incidental to the ownership, maintenance, or use of the
11 dwelling, including the care and supervision of children, or whose
12 duties are personal and not in the course of the trade, business,
13 profession, or occupation of the owner or occupant.

14 (e) An employee suffering injury as a result of a knowing and
15 intentional failure by an employer to comply with subdivision (a)
16 is entitled to recover the greater of all actual damages or fifty
17 dollars (\$50) for the initial pay period in which a violation occurs
18 and one hundred dollars (\$100) per employee for each violation
19 in a subsequent pay period, not exceeding an aggregate penalty of
20 four thousand dollars (\$4,000), and is entitled to an award of costs
21 and reasonable attorney's fees.

22 (f) A failure by an employer to permit a current or former
23 employee to inspect or copy records within the time set forth in
24 subdivision (c) entitles the current or former employee or the Labor
25 Commissioner to recover a seven-hundred-fifty-dollar (\$750)
26 penalty from the employer.

27 (g) An employee may also bring an action for injunctive relief
28 to ensure compliance with this section, and is entitled to an award
29 of costs and reasonable attorney's fees.

30 (h) This section does not apply to the state, to any city, county,
31 city and county, district, or to any other governmental entity, except
32 that if the state or a city, county, city and county, district, or other
33 governmental entity furnishes its employees with a check, draft,
34 or voucher paying the employee's wages, the state or a city, county,
35 city and county, district, or other governmental entity shall use no
36 more than the last four digits of the employee's social security
37 number or shall use an employee identification number other than

- 1 the social security number on the itemized statement provided with
- 2 the check, draft, or voucher.

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